

#13134503

STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

#11-2900-043

AGREEMENT made and entered into this 1st day of October, 2010, by and between the Office of Attorney General 1302 East Highway 14, Pierre South Dakota 57501 (the "State") and Porter Lee Corporation, 1901 Wright Blvd., Schaumburg, IL 60193. (the "Consultant").

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will perform those maintenance services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

2. The Consultant's services under this Agreement shall commence on **October 1, 2010** to **September 30, 2011**, unless sooner terminated pursuant to the terms hereof.

3. The Consultant will not use State equipment, supplies or facilities. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

4. The **TOTAL CONTRACT AMOUNT** is an amount not to exceed **\$13,224**. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.

5. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Auditor 11.8.10
Freestone 11.8.10

The Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$N/A.

C. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$200,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then

the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. Consultant warrants that the software maintained under this Agreement will be in compliance with the BIT Standards for security, file naming conventions, executable module names, Job Control Language, systems software version and release levels, temporary work areas, executable program size, forms management, network access, tape management and job stream procedures prior to the installation and acceptance of the final project. BIT hardware and software standards can be found at <http://www.state.sd.us/bit/bitservices/standards/>.

16. The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in

transactions by the federal government, or by any state or local government department or agency.

17. Consultant agrees to comply with the Confidentiality Provision attached hereto as Exhibit B and by this reference incorporated herein.


18. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Craig Price on behalf of the State, and by Tim Smith, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

20. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

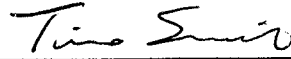
In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY: 
Marty Jackley
Attorney General, South Dakota
Office of the Attorney General

10-1-10
(DATE)

CONSULTANT

BY: 
Tim Smith
President
Porter Lee Corporation

10-29-10
(DATE)

-Kay McLain (605) 773-3215 can provide additional information regarding this contract.
-Contract will be paid out of Coverdell FY 09 2911011348.

EXHIBIT A

STATE OF SOUTH DAKOTA CONSULTING CONTRACT PORTER LEE CORPORATION

WORK PLAN

SOFTWARE MAINTENANCE

Upon payment of the required software maintenance/support fee by Customer, Porter Lee Corporation (PLC) agrees to provide software maintenance for the Crime Fighter BEAST (software) to South Dakota DCI according to the following terms:

1. PLC will provide enhancements to existing features when it reaches production code for other customers. PLC will provide the corresponding up-to-date documentation with all new enhancements.

Note: South Dakota DCI defines enhancement as "changes that makes a version of software better than the previous version."

PLC will provide South Dakota DCI with detailed documentation of all new features, as and when it reaches production code for other customers. South Dakota DCI will decide whether any or all of these features would be incorporated into the current system. If additional customization hours are required by PLC to add these features, South Dakota DCI needs to sign-off on these hours/\$ before implementation.

2. PLC will not introduce enhancements to existing features that forces the customer to make major changes that would have a negative impact on the BEAST production environment.
3. Any enhancements that are introduced in the future will be optional for South Dakota DCI to implement. The use of control flags to indicate the status of the enhancements will be implemented. The default value for the control flag is off.
4. PLC reserves the right to introduce customizations completed for a specific customer to the base BEAST software, provided it is implemented consistent with term #3 (above) in a manner that gives South Dakota DCI the option to enable or disable the new functionality.
5. South Dakota DCI reserves the right to not upgrade to a new release of the software. All support and maintenance would still be in effect for the current version being used by South Dakota DCI and all versions moving forward in the software releases.
6. All new releases of the software will be certified in the following operating systems:
 - i. Windows 98
 - ii. Windows NT Workstation
 - iii. Windows 2000
 - iv. Windows XP

v. Windows 7

No later than six months after the release of a new version of the operating system, PLC agrees to notify South Dakota DCI of their intention to convert the BEAST to the new release. Conversion will not require South Dakota DCI to update to the new operating system.

STANDARD SOFTWARE SUPPORT

1. All support calls/e-mails will be given a ticket number and assigned to a PLC staff person. All calls/e-mails should be logged and tracked by the assigned person. The assigned person will supply all follow-ups (via e-mail or website updates) on the status and resolution to the South Dakota caller.
2. PLC will provide emergency support to South Dakota DCI at no extra cost. A PLC staff person will be reachable via pager, cell phone, etc., the information for which will be provided to South Dakota DCI. The decision to use emergency support will be at the South Dakota DCI system administrator's discretion.

Note: South Dakota DCI defines emergency support as "weekends and holidays, 24 hours".

3. During normal hours support, the response time would be a maximum of 1 hour. During afterhours and emergency support, the response time would be a maximum of 3 hours. The caller will receive a return call within the response time detailing the solution (if known) or the timeframe for a solution.

Note: South Dakota DCI defines normal hours support as "Monday through Friday, between 8:00 a.m. EST and 5:00 pm. CST".

4. The support will include all software utilities and custom code as defined as Exhibit C. South Dakota DCI and PLC agree to review and update the Exhibit list once per year to ensure support is provided on the most current list of software, utilities and custom code.
5. South Dakota DCI agrees to train their technical staff in the general architecture, technical support and configuration of the BEAST software. All trained technical staff is granted permission to call/e-mail into PLC's support center for assistance.
6. South Dakota DCI agrees to train its customers (users of the BEAST software) in the use of the BEAST software. All trained customers are granted permission to call into the PLC support center for assistance.
7. South Dakota DCI agrees to supply PLC a means to dial-in/VPN to the South Dakota DCI technical architecture for trouble shooting, problem resolution and general support.
8. South Dakota DCI agrees to supply PLC a means to transfer releases and patches via FTP for trouble shooting, problem resolution and general support.

COST OF SUPPORT AND MAINTENANCE

1. The annual cost for the support and maintenance agreement is specified in the cost proposal and included in the payment.
2. The cost of software maintenance will not change during the term of the agreement.
3. All upgrades related to reliability or operation of the BEAST software will be provided at no additional cost. The upgrades would include current major/minor versions.
4. All upgrade involving enhancements or new features within the scope described in the Statement of Work would be provided at no additional cost. If additional customization or programming hours are required and are outside the scope and terms of the Statement of Work, the costs will be calculate at \$150.00 per hour for each hour PLC requires to complete the requests.

EXHIBIT B

STATE OF SOUTH DAKOTA CONSULTING CONTRACT PORTER LEE CORPORATION

CONFIDENTIALITY PROVISION

1. In order for Consultant to perform the computer programming services contemplated under the Agreement, Consultant may require access to confidential information.
2. Consultant acknowledges the State's need to keep confidential information it maintains, that is subject to various confidentiality statutes and legal privileges held by the State as well as other agencies, state agency clients, in-state and out-of-state government entities, and third parties.
3. Consultant agrees in order to protect the confidentiality and legal privileges associated with State computer usage and data storage that it and all of its officers, agents, and employees:
 - a. Will not, at any time, either directly or indirectly, make public, reveal, or communicate to any person, firm, or corporation or public entity, in any manner whatsoever, any information concerning any matters affecting or relating to confidential records or data that may be obtained in the course of performing this Agreement.
 - b. Will not reproduce or transfer in any way or manner or share with any person except as specifically authorized by the State any confidential data or information provided by the State.
 - c. Will not read, review, monitor, access, or attempt entry or other accession, of any data, documents, records, files (private or public), databases, communications, research trails, cookies, hard drives, servers, back up tapes or other back up mechanisms or facilities, on any State computer.
4. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.
5. Consultant will enforce the terms of this Confidentiality Provision to its fullest extent. Consultant agrees that remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision
6. Violation of this Confidentiality Provision is cause for immediate termination of this Agreement and could subject any violator to criminal prosecution in accordance with state law.
7. Neither this Confidentiality Provision, nor any part thereof, shall establish any privacy rights to, for or on the part of, any employee of the Consultant or State or waive any remedies against any such person for illegal, improper, or unauthorized use of the computers or any computer system or portion thereof.

EXHIBIT C

STATE OF SOUTH DAKOTA
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PORTER LEE CORPORATION

HARDWARE, SOFTWARE UTILITIES AND CUSTOM CODE

1. All LIMS software modules and custom code for all software modules: Case Management, management Reporting, Analyst Reporting, Instrument Interface, Chemical Inventory, Chain of custody with bar coding, audit log tracking, web pages.
2. All Hardware is under manufacturer warranty.